

Exhibit R

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUL 06 2012

ALAN CARLSON, Clerk of the Court

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9 **SUPERIOR COURT OF STATE OF CALIFORNIA**

10 **COUNTY OF ORANGE, CENTRAL JUSTICE CENTER 30-2012**

11 JULIO PICHARDO,

12 Plaintiff

13 vs.

14 GMAC MORTGAGE; DOES 1 to 10,

15 Defendants

CASE NO:

00581642

COMPLAINT FOR:

1. VIOLATION OF THE FAIR DEBT COLLECTIONS PRACTICE ACT
2. NEGLIGENT MISREPRESENTATION
3. VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200
4. VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17500

JUDGE ROBERT J. MOSS
DEPT C-23

21 **I.**

22 **GENERAL ALLEGATIONS**

23 COMES NOW Plaintiff, JULIO PICHARDO (hereinafter "Plaintiff"), who by reason of
24 the following causes of action against the above-captioned defendants, and each of them, alleges
25 as follows:

26 **II.**

27 **JURISDICTIONAL ALLEGATIONS**

1 11. Plaintiff responded each and every time that his loan was current and that he had
2 already made the payments which GMAC identified as being past due.

3 12. Each and every time, GMAC responded by repeating that his loan was past due
4 and by using verbally abusive language, including threats of criminal liability and obscene and
5 profane language.

6 13. The phone calls made by Defendant GMAC contained numerous false and
7 misleading representations about the character, amount and legal status of the debt owed to
8 Defendant GMAC.

9 14. Plaintiff often received numerous phone calls throughout 2011 and 2012, the
10 intent of which was to engage Plaintiff on the phone repeatedly and continuously to annoy,
11 harass and abuse Plaintiff.

12 15. Plaintiff is informed and believes that each and every phone call from Defendant
13 GMAC was done by an agent and employee of GMAC.

14 16. Plaintiff attempted to ascertain the names and identification of the persons
15 responsible for the phone calls but was unable to do so because the person or persons responsible
16 for the calls would only identify themselves as being employees of GMAC.

17 17. The conduct of Defendant GMAC in harassing Plaintiff in an effort to collect this
18 debt by repeatedly engaging Plaintiff in phone calls and verbally abusing Plaintiff was a
19 violation of numerous provisions of the Fair Debt Collections Practices Act, including, but not
20 limited to, 15 U.S.C. sections 1692d, 1692e, 1692e(5), 1692e(7), 1692e(10) and 1692f.

21 18. As a result of the above-described conduct, Plaintiff has suffered, and continued
22 to suffer from severe emotional distress. Plaintiff has been hospitalized numerous times and has
23 incurred substantial medical bills as a result of the harassing conduct of Defendant GMAC.

24 **FIRST CAUSE OF ACTION**
25 **(Violation of the Fair Debt Collection Practices Act)**

26 19. Plaintiff herein repeats and incorporates each of the preceding paragraphs above as
27 though fully set forth.
28

1 20. Plaintiff has received numerous threatening phone calls from agents and
2 employees of Defendant GMAC. During each and every phone call, Plaintiff was told that his
3 mortgage was in default and that GMAC would begin foreclosing on the property.

4 21. Plaintiff responded each and every time that his loan was current and that he had
5 already made the payments which GMAC identified as being past due.

6 22. Each and every time, GMAC responded by repeating that his loan was past due
7 and by using verbally abusive language, including threats of criminal liability and obscene and
8 profane language.

9 23. The phone calls made by Defendant GMAC contained numerous false and
10 misleading representations about the character, amount and legal status of the debt owed to
11 Defendant GMAC.

12 24. Plaintiff often received numerous phone calls throughout 2011 and 2012, the the
13 intent of which was to engage Plaintiff on the phone repeatedly and continuously to annoy,
14 harass and abuse Plaintiff.

15 25. Plaintiff is informed and believes that each and every phone call from Defendant
16 GMAC was done by an agent and employee of GMAC.

17 26. Plaintiff attempted to ascertain the names and identification of the persons
18 responsible for the phone calls but was unable to do so because the person or persons responsible
19 for the calls would only identify themselves as being employees of GMAC.

20 27. The conduct of Defendant GMAC in harassing Plaintiff in an effort to collect this
21 debt by repeatedly engaging Plaintiff in phone calls and verbally abusing Plaintiff was a
22 violation of numerous provisions of the Fair Debt Collections Practices Act, including, but not
23 limited to, 15 U.S.C. sections 1692d, 1692e, 1692e(5), 1692e(7), 1692e(10 and 1692f.

24 28. As a result of the above-described conduct, Plaintiff has suffered, and continued
25 to suffer from severe emotional distress. Plaintiff has been hospitalized numerous times and has
26 incurred substantial medical bills as a result of the harassing conduct of Defendant GMAC.

27 ///

28 ///

1 **SECOND CAUSE OF ACTION**
2 **(Negligent Misrepresentation)**

3 29. Plaintiff herein repeats and incorporates each of the preceding paragraphs above as
4 though fully set forth.

5 30. Defendant GMAC, through its agents and employees, represented to Plaintiff that
6 his loan was in default and made numerous other false and misleading representations about the
7 character, amount and legal status of the debt owed to Defendant GMAC.

8 31. These representations were false.

9 32. Defendant, through its agents and employees, made these representations to
10 Plaintiff either knowing they were false, or with reckless disregard for the truth.

11 33. Defendant intended Plaintiff to rely on these representations.

12 34. Plaintiff reasonably relied on these representations. Plaintiff's health deteriorated
13 quickly upon learning that his loan was in default. Plaintiff believed Defendant's threats of
14 criminal liability and feared for his own safety and for the loss of his home.

15 35. Plaintiff was and continues to be harmed in a monetary amount to be proven at
16 trial.

17 36. Plaintiff's reliance upon the above described representations by the herein named
18 defendant was a substantial factor in causing his harm.

19 37. The acts of Defendant were willful, wanton, malicious and oppressive, and thus
20 justify the awarding of exemplary and punitive damages.

21 **THIRD CAUSE OF ACTION**

22 **(Violation of Bus. & Prof. Code Section 17200)**

23 38. Plaintiff herein repeats and incorporates each of the preceding paragraphs above
24 as though fully set forth.

25 39. Defendant GMAC has violated and continues to violate Business and Professions
26 Code section 17200 by engaging in unlawful, unfair and fraudulent business practices.
27 Specifically, Defendant, through its agents and employees, falsely informed Plaintiff that his
28

1 loan was in default and that he was subject to foreclosure and criminal liability if he did not
2 make additional payments which were not due.

3 40. Defendant GMAC's action and representations, which were made with intent to
4 induce Plaintiff's reliance, constitute unfair and unlawful business practices under California
5 law.

6 **FOURTH CAUSE OF ACTION**

7 **(Violation of Bus. & Prof. Code Section 17500)**

8 41. Plaintiff herein repeats and incorporates each of the preceding paragraphs above
9 as though fully set forth.

10 42. Defendant has violated and continue to violate Business and Professions Code
11 section 17500 by making or disseminating untrue or misleading statements, or by causing untrue
12 or misleading statements to be made or disseminated, in or from California. These untrue and
13 misleading statements include but are not limited to:

14 a. Throughout 2011 and 2012, Plaintiff received numerous threatening phone
15 calls from agents and employees of Defendant GMAC. During each and every phone call,
16 Plaintiff was told that his mortgage was in default and that GMAC would begin foreclosing on
17 the property.

18 b. GMAC told Plaintiff on numerous occasions that his loan was past due
19 and that he would be subject to criminal liability if he did not make additional payments.

20 43. Defendant GMAC knew, or by the exercise of reasonable care should have
21 known, that these statements were untrue or misleading at the time they were made.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff prays for judgment against defendants, and each of them, as
24 follows:

- 25 1. For actual, compensatory and/or consequential damages in amounts according to
26 proof at trial;
27 2. For restitution;
28 3. For punitive damages;

4. For costs of suit;
5. For attorneys fees where permitted by law;
6. For such other and further relief as this Court deems just and proper.

Dated: June 20, 2012

BAHADORI & THOMAS, LLP

By: 

AMID T. BAHADORI
BRYAN M. THOMAS
Attorneys for Plaintiff

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability *(not asbestos or toxic/environmental)* (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice *(not medical or legal)*
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract *(not unlawful detainer or wrongful eviction)*
Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage *(not provisionally complex)* (18)
Auto Subrogation
Other Coverage

Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment *(non-domestic relations)*
Sister State Judgment
Administrative Agency Award *(not unpaid taxes)*
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint *(not specified above)* (42)
Declaratory Relief Only
Injunctive Relief Only *(non-harassment)*
Mechanics Lien
Other Commercial Complaint Case *(non-tort/non-complex)*
Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition *(not specified above)* (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

ntiff/petitioner: JULIO PICHARDO

bankruptcy case number 12-12020 DOC# 1026

endant/ respondent: GMAC DOES 1 TO 10

PROOF OF SERVICE SUMMONS

he time of service I was a citizen of the United States, at least 18 years of age.
rved proof of service to person authorized to receive it described herein.

TE OF HEARING: AUGUST 29TH AT 10:00 AM

ACE OF HEARING: AT NEW YORK SOUTHERN DISTRICT BANKRUPTCY COURT
JE BOWLING GREEN NEW YORK, N.Y. 10004-1408

DGE GLENN COURT 501 CASE 12-12020 -- DOC# 1026

aring held for: relief from automatic stay

By mail acknowledgment: I mailed documents via confirmation of mailing to defendant to:
10 N. GATEWAY OAKS DR. STE 150 SACRAMENTO CA. 95833

son served: CSC - BECKY DEGEORGE - person authorized service of process

te mail sent: August 9th 2012

rved on behalf of: GMAC MORTGAGE DOES 1 TO 10

rved by confirmation of mailings by: ROCIO PICHARDO
Address: 1201 E. SENECA AVE FULLERTON CA. 92831

ecclare under penalty of perjury under the laws of the united state of America that the foregoing is true and correct

ame of person who served papers: ROCIO PICHARDO

SIGNATURE

Rocio Pichardo

S. Postal Service	
CERTIFIED MAIL - RECEIPT	
(Domestic Mail Only: No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
SACRAMENTO CA 95833	
OFFICIAL USE	
Postage	\$ 0.45
Certified Fee	\$2.95
Return Receipt Fee (Postment Required)	\$0.00
Restricted Delivery Fee (Postment Required)	\$0.00
Total Postage & Fees	\$ 3.40

08/09/2012

MAC / BECKY DEGEORGE